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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-235

MARCO DEFUNIS and BETTY DEFUNIS, his wife; MARCO DEFUNIS, JR. and LUCIA DEFUNIS, his wife,
Plaintiffs-Petitioners,

v.

CHARLES ODEGAARD, President of the University of Washington; RICHARD L. RODDIS, Dean of the University of Washington Law School; RICHARD KUMMERT, ROBERT T. HUNT and RICHARD L. RODDIS, Admissions Committee of the University of Washington Law School; HAROLD S. SHEFELMAN, JAMES R. ELLIS, R. MORT FRAYN, ROBERT L. FLENNAUGH, JACK G. NEWPERT, ROBERT F. PHILIP and GEORGE B. POWELL, Regents of the University of Washington; HAROLD GARDINER, Registrar of the University of Washington; and UNIVERSITY OF WASHINGTON,
Defendants-Respondents.

UPON CERTIORARI FROM THE JUDGMENT OF THE SUPREME COURT OF WASHINGTON

PETITIONERS' REPLY BRIEF

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ARGUMENT IN REPLY

Race Is Not a Proper Criterion to Bar One From a Public Benefit

Respondents in their brief (page 19) argue that the Equal Protection Clause does not forbid consideration of race.

We do not not contend that it does.

We do contend that one cannot be barred from public benefits because of his cace.

Had DeFunis been Black, there can be no question that he would have been admitted to the University Law School without hesitation.

It was his race that kept him from being admitted.

It is not necessary to argue that race under no circumstances can be considered if that is necessary to prevent discrimination, but what we are saying is that race cannot be the basis for discrimination. That is what occurred in this case.

In the present case race was not merely *one* consideration by which members of specific minorities were preferred over DeFunis for admission to the law school, but was virtually the *only* consideration.

The trial court in its findings (A-52) held that the Admissions Committee "assumed that all members of minority races, with the exception of Asian-Americans, were deprived persons." This they did without making any further inquiry as to their deprivations or without inquiring as to whether persons of the White race might be also deprived persons (St. 262).

By the preference given to so-called "minority races" the trial court found that DeFunis was displaced by minority students with college grades and aptitude test scores so low that *had they been White their applications would have been summarily denied* (Findings XXIII, A-53).

This was not a matter of the exercise of "committee discretion confined by prearticulated standards" (Resp. Br. p. 17) with respect to admission of individual applicants,

since, in effect, there were *no articulated standards* other than race.

Professor Kummert testified: "We have no definitive standards" (St. 403). The operative considerations that brought about the result of plaintiff not getting into the law school were matters simply not subject to standards. The committee did not establish any standards (St. 403) and no one else established standards for them (St. 403).

Plaintiff was rejected, not upon the basis of objective criteria such as grades, test scores or PFYA, but on the basis of what were referred to in the testimony as "other things" (St. 87). The consideration of "other things" included the preferential treatment of the so-called minorities.

By the method under which the determination of who could enter law school was handled, all of the objective standards could be and were set aside in favor of uncontrolled judgment by members of the Admissions Committee—some of whom were inexperienced and unqualified.

There was nothing in the system of student selection that assured equal treatment or equal protection of the laws to those who might offend the prejudices of the selection committee. But the system did have a built-in preferential treatment for four types of minorities, not all minorities, but only four, Blacks, Chicanos, Philippinos and American Indians.

The acceptance of the fact that one is Black as conclusive proof that he is entitled to special consideration in the determination of his eligibility without any further inquiry as to whether he is in fact the victim of economic depriva-

tion or educational disadvantage, is an impermissible discrimination against the White applicant who is displaced thereby.

The use of the term "culturally deprived" does not remove the taint of discrimination from the special privileges accorded to certain races. No cultural deprivation tests were in fact employed by the University in determining who should enter the law school. These minorities were specially admitted even though they may have been of middle class background, have professional parents or otherwise have had average or above average cultural opportunities.

If the reason that only Blacks, Chicanos, Philippinos and Indians are entitled to special privileges in law school admissions to the University not accorded to other races is because the court judicially knows that only they have been subjected to racial prejudice, then the court must judicially know that there are no racial prejudices against the people who find themselves described as "Gooks," "Dagos," "Wops," "Kikes," "Bohunks," "Squareheads," "Chinks," etc. as to whom special privileges have not been accorded.

The essence of the arguments of respondents and some of the *amici curiae* that Blacks should not be subjected to the same criteria as Whites is in effect an argument that there should be one law for Blacks and one law for Whites.

Such a principle has been repudiated by this court more than once. This court has indicated that equal protection is a pledge of equal laws. *State of Missouri ex rel. Gaines v. Canada*, 305 U.S. 337, 83 L.Ed. 208. The Equal Protection

Clause of the 14th Amendment is available to all citizens, not just to Blacks or so called minorities.

If, what respondents on page 10 of their brief call the "conventional mechanical credentializing system" does not always produce good indicators of the culturally separated or deprived individuals, we submit that it makes no difference whether they are Black or White. Since there is no inquiry as to whether the White is also culturally separated or deprived, there is no justification for using a different criterion for one merely because he is Black.

If there is something wrong with the system of credentializing, then it should be changed for *everyone*. The mere fact that DeFunis was White should not subject him to more stringent criteria for entry to the law school than he would have if he were Black.

Law is a learned profession and the objective of the law school should be to train students to qualify for that *highly competitive* profession with ability to practice with competence.

If we can pretend that those who fail to meet the minimum tests applicable generally for entrance into the law school are nevertheless as acceptable as those who do, and if it is intended regardless of how well they meet the criteria to give the so-called "minorities" a representation in the profession equal to their numbers in the population, we may as well accomplish that by allowing graduation regardless of low grades in law school and admitting them to the Bar without requiring passage of examination standards required of White applicants. The principle is exactly the same.

When the students who receive these special privileges are graduated, they will be held out to the public as being qualified to practice law. In the highly competitive field of law, qualification is not an *absolute* thing but a *relative* matter and in competition with those who do have an ability to do well in schooling and *learn the subjects properly*, those practitioners who obtain their admission to the profession by the pretense of qualifications they did not have will be poor representatives of their clients.

The argument that is made in respondents' brief that none of the minorities with the low scores were unqualified begs the question because, as respondents' brief states on page 4, the Chairman of the Admissions Committee stated in testimony that most all of the applicants for admission were qualified by admission standards of other comparable law schools in recent years.

All of the White students who were summarily rejected were also "qualified" if we disregard their qualifications *relative* to the applicants with the higher scores.

The preference of the less qualified over the better qualified merely because of color does violence to the right of persons to succeed on their own merits and denies the equal protection of the laws.

The issue which respondents undertake to inject into this case by their mention on page 37 of their brief of the contention which they made below that DeFunis would not have been admitted even if the Blacks had not been preferred, was not accepted by the Washington Supreme Court as affecting his standing to maintain this action, and the contention was unsound in any event because it was

not supported by the facts as found or shown by the evidence.

The placing of plaintiff so far down the waiting list was one of the causes for complaint in this action. Measured by any objective tests, plaintiff should have been within the 311 applicants who were offered admissions in September. Thus, out of 275 students who were offered admission in August, 180 had lower junior/senior grade point averages than plaintiff (Findings XX, A-52), but out of the 330 students who were considered for admission in September, 224 had lower junior/senior grade point averages than plaintiff (Findings XX, A-52), and this is using the law school's figures which omitted the nine hours of "A" earned in his junior year (Findings XX, A-52). The argument that plaintiff's quartile would not have been reached overlooks the fact that students on the waiting list were *not placed in quartiles in order of measurable standards*, such as their grade averages or predicted first-year averages, but on the basis of *arbitrary* selections made *without standards.*

Had plaintiff been considered on the basis of any objective standards which were applied eqully to all applicants, he would have been among the 311 invited to attend, whether we approach it from the standpoint of junior/senior grade averages, predicted first-year averages (PFYA) or law school aptitude tests (LSAT).

There was ample evidence to support the trial court's finding of fact that the admission of less qualified students resulted in a denial of placement of those better qualified (Findings 24, A-53), and that plaintiff had better qualifica-

tions than many of those admitted to the law school (Findings 25, A-53).

Since plaintiff would have accepted had he been on the list of 311 invitees, his exclusion from that list definitely excluded him from the school. There was ample evidence to sustain the court's finding which in effect held that plaintiff was crowded out by less qualified students.

Much of respondents' brief is concerned with philosophical discussions of matters not in the record purporting to prove the desirability of giving special privileges to the minority races that are denied to members of the majority race. Respondent would have the court take judicial notice of all sorts of things about the relationship of Blacks to the community.

The trouble with judicial notice of this kind, is that the court is being asked to judicially know a great many things that may or may not be true. Thus the empirical assumption is made that there is a necessity to have a higher percentage of Blacks in the law school. This is not based on anything in the Constitution or statutes nor do we know of any such public policy. Judicial knowledge is supposed to be confined to those things of which well-informed people in the community have knowledge. It does not extend to controversial and arguable matters.

If the court judicially knows that all Blacks are culturally deprived and come to the law school with lower academic preparation than all Whites, then the court is undertaking to judicially know that in Washington, where most of these Blacks went to the same public schools as the Whites, that they did not get equal lower school education. There is nothing in the record to substantiate this.

The extent to which preference on account of race was allowed to determine the admissions policy of the University of Washington in this case is shown by the fact that three members of the so-called "minority races" who had not even been on the waiting list at the time DeFunis was eliminated, were admitted later with almost incredibly low scores in all of the objective criteria used to determine qualification.

A reference to page 44 of the Single Appendix will show, for example, one of these who was admitted had a predicted first-year average of only 69.97 as compared to the cutoff figure of 75.4 for White students. This same student had a writing test figure of only 28, which was the lowest in the whole group considered. He had a law school aptitude test score of 392 compared to DeFunis' score of 668 (Findings 13, A-50), and a combined Junior/Senior grade point average of 3.21 out of a possible 4.00. The other two late entries had comparable low scores. A reference to Schedule A found in Single Appendix 37, will show that no White students were admitted with any such low scores.

That same exhibit on pages 44 and 45 of the Single Appendix will show that as of August 1, 1971, when DeFunis was eliminated, there were no minority students even on the waiting list. The quartiles on the waiting list were reserved for White students. There can be no question that DeFunis was not given the same consideration as was accorded to members of the so-called "minority" groups.

Some of the amici curiae take issue with the findings of the trial court to the effect that DeFunis was crowded out of the law school by the preferential admission policy given to the minorities.

In Washington findings of fact made by the trial court which are not modified by the appellate court are treated as verities for all purposes of this case. *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183; *O'Brien v. Schultz*, 45 Wn.2d 769, 278 P.2d 322.

The findings of the Washington trial court have not been disturbed on appeal and are the conclusive facts in this case.

When the University law school was faced with having a greater number of applicants than the spaces available, various alternatives might have been followed to determine who should be admitted and who should be rejected.

For example, all qualified students might have been taken on a first-come, first-served basis or selection might have been made by lot or, those having the highest grade or test qualifications might have been preferred, or some formula of weighting might have been devised to judge students on the basis of some kind of examination or *uniform* standard.

The University elected to test the qualifications for White students on the basis of the records of their performance as students and their test scores. However, with regard to the so-called "minority students" it arbitrarily admitted them without requiring them to meet any of the objective tests for qualification. This was a *competitive* situation and the special privileges afforded the minority students meant the *elimination* of the White students who were better qualified.

The trial court found and the facts are that on the basis of race DeFunis was denied admission to the law school.

Whites do have the right to be protected by the laws against discrimination. Thus, in *Peterson v. Kiff*, 407 U.S. 493, 33 L.Ed.2d 83, it was a White who was held entitled to challenge the exclusion of certain races from a grand jury and in *Trafficante v. Metropolitan Life Insurance Company*, 409 U.S. 205, 34 L.Ed.2d 415, the challenge by a White to segregation was permitted.

When the applicants for the law school were segregated into two groups and the "so-called minorities" were judged on one basis and the Whites were judged on another, the University was practicing *segregation and discrimination.*

Some *amici curiae* are contending that the Equal Protection clause of the 14th Amendment is available only to Blacks. This has been quite well discredited by the frequent application of the 14th Amendment in all of its ramifications to every kind of claimant, including corporations. For example: *Smith v. Cahoon*, 283 U.S. 553, 75 L.Ed. 1264; *Kentucky Finance Corporation v. Paramount Auto Exchange Corporation*, 262 U.S. 544, 67 L.Ed. 1112; *Hines v. Davidowitz*, 312 U.S. 52, 85 L.Ed. 581; *Skinner v. Oklahoma*, 316 U.S. 535, 86 L.Ed. 1655; *Lewis K. Liggett Co. v. Baldridge*, 278 U.S. 105, 73 L.Ed. 204; *Takahashi v. Fish & Game Commission*, 339 U.S. 410, 92 L.Ed. 1478.

There is no evidence in this case that the University of Washington had ever discriminated against the so-called "minority races" and this is not a case involving the framing of a remedy for past discrimination. There was no evidence of any such discrimination and respondents do not contend that the University ever discriminated.

The fact that most of the students at the University of Washington Law School in the past have been White, as

respondents point out in their brief, does not mean that there was discrimination against them or that they were segregated. The University has always had an "open door policy."

The predominance of Whites in the University law school may well be explained by a lack of inclination or aptitude on the part of the Blacks for such studies.

Any observant person knows that certain races have certain bents or inclinations. The fact that the heavyweight boxing field is dominated by Blacks does not prove that Whites are excluded by discrimination. Anyone who observes professional basketball will note that an exceptionally high percentage of the professional players are Black.

Does this mean that this is a segregated sport? Blacks have demonstrated their dominance in certain athletic endeavors. By the same logic as impells the preference of less qualified minorities to achieve racial balance in law, it might be argued that special treatment should be given Whites to achieve racial balance in athletics.

Violation Of the Federal Civil Rights Act Is An Issue Properly Before This Court

As pointed out in our opening brief, exclusion of DeFunis from participation in the benefits of the federally assisted University of Washington was a violation of Title 42 USC, §2000(d), part of the Federal Civil Rights Act.

This issue was raised and argued extensively in the brief presented to the Washington Supreme Court. It is not raised for the first time in this court. The brief filed in the Washington Supreme Court was included in the record that went to this court with the Petition for Certiorari.

Reference to the brief of the respondents before the Washington Supreme Court will show that a whole section of the brief was devoted to this issue, beginning on page 14 thereof. While the Washington Supreme Court elected to ignore that argument in its Opinion, as it did the argument relative to the violation of the Equal Rights and Immunities Clause of the Washington State Constitution, the matter was presented to it and was argued. When the matter was before the Washington Supreme Court, DeFunis was *respondent*, not appellant, and DeFunis was urging *affirmance* of the judgment of the Superior Court.

In any event the rule is well settled both in the Supreme Court of Washington and in this court, that a judgment of a court below may be *affirmed* on any ground that will support it regardless of whether or not the grounds for affirmance are the same as the theory of the lower court and *whether or not the particular ground was urged in the lower court.*

In *Helvering v. Gowran*, 302 U.S. 245, 82 L.Ed. 224, this court said, beginning on page 245:

> "Gowran contends here that the Government should not have been permitted by the Court of Appeals to argue its 'basis of zero' theory, because that theory raised an issue not pleaded, tried, argued or otherwise referred to in the proceedings before the Board. It is true that the theory was first presented by the Commissioner in the Court of Appeals. But it does not appear by the record that objection to the consideration of this theory was made below. . . . ". . . It is immaterial whether the commissioner proceeded upon the wrong theory. The burden is upon the petitioner to show that the assessment is wrong upon any proper theory; otherwise he must fail.'
>
> "In the review of judicial proceedings the rule is

> settled that if the decision below is correct, it must be affirmed, *although the lower court relied upon a wrong ground or gave a wrong reason.* Frey & Son v. Cudahy Packing Co., 256 U.S. 208, 65 L.ed. 892, 41 S.Ct. 451; *United States v. American R. Exp. Co.*, 265 U.S. 425, 68 L.ed. 1087, 44 S.Ct. 560; United States v. Holt State Bank, 270 U.S. 49, 56, 70 L.ed. 465, 469, 46 S.Ct. 197; Langnes v. Green, 282 U.S. 531, 75 L.ed. 520, 51 S.Ct. 243; Stelos Co. v. Hoisery Motor-Mend Corp., 295 U.S. 237, 239, 79 L.ed. 1414, 1416, 55 S.Ct. 746; cf. United States v. Williams, 278 U.S. 255, 73 L.ed. 314, 49 S.Ct. 97." (Emphasis supplied)

We are not seeking to *reverse* the decision of the superior court by this appeal and the rule that prevents raising a new issue for the first time on appeal does not bar asserting any theory *in support* of a decision. The distinction between raising new issues to affirm a decision and raising them to *reverse* a decision is well illustrated by what the Ninth Circuit Court of Appeals said in *Spokane County v. Air Base Housing, Inc.*, 304 F.2d 494. The court said on page 497:

> "Appellant asserts that this contention may not be urged here since this point was not presented or decided in the trial court. Appellee argues that the judgment may be affirmed upon a ground differing from that relied upon by the trial court. Reliance is upon the statement in *Helvering v. Gowran*, 302 U.S. 238, 245, 58 S.Ct. 154, 82 L.Ed. 224: 'In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason.'...
>
> "...
>
> "The rule above quoted from *Helvering v. Gowran, supra,* is one generally recognized and one which has been often approved and restated in this court. Of

course this rule relates to *affirmance* on new grounds not relied upon in the trial court. There is no such general rule authorizing an appellate court to *reverse* on grounds other than those urged in the trial court.

To the same effect in Washington is *Curltiss v. Young Mens Christian Ass'n.*, 82 Wn.2d 455, 511 P.2d 991.

The issue of the violation by the University of the requirements of Title 42 USC, §2000(d) in DeFunis' case was properly before the Washington Supreme Court. It is properly before this court.

The exclusion of DeFunis from the law schol on the basis of race was a direct violation of that section.

This court in the recent case of *Lau v. Nichols*, decided January 21, 1974, Vol. 42, Law Week, 4165, says of Title 42 USC §2000(d):

> "That section bans discrimination based 'on the ground of race, color, or national origin,' in 'any program or activity receiving federal financial assistance.'"

The court in that case said:

> "By §602 of the Act HEW is authorized to issue rules, regulations, and orders to make sure that recipients of federal aid under its jurisdiction conduct any federal financed projects consistently with §601. Hew's regulations specify, 45 CFR §80.3(b)(1), that the recipients may not:
>
> " 'Provide any service, financial aid, or other benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;
>
> " 'Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service, financial aid, or other benefit under the program';

"Discrimination among students on account of race or national origin that is prohibited includes 'discrimination in the availability or use of any academic . . . or other facilities of the grantee or other recipient.' Id., 80.5(b).

"Discrimination is barred which has that *effect* even though no purposeful design is present: a recipient 'may not . . . utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination' or has 'the effect of defeating or substantially impairing accomplishment of the objectives of the program as respect individuals of a particular race, color, or national origin.' Id., 80.3(b)(2)."

The court went on to say:

"The Federal Government has power to fix the terms on which its money allotments to the States shall be disbursed. *Oklahoma v. Civil Service Commission*, 330 U.S. 127, 142-143. Whatever may be the limits of that power *Steward Machine Co. v. Davis*, 301 U.S. 548, 590 *et seq.*, they have not been reached here. Senator Humphrey, during the floor debates on the Civil Rights Act of 1964, said:

"'Simple justice requires that public funds, to which all taxpayers of all races contribute, not be spent in any fashion which encourages, entrenches, subsidizes, or results in racial discrimination.'"

It will be noted that from the regulations quoted in the above decision, an institution which is receiving federal financial assistance may not provide any service or other benefit to an individual "which is *different* or is provided in a *different* manner from that provided to others under the program." (Our emphasis)

Requiring DeFunis and others like him to meet more stringent admission standards than those of the so-called "minority races" was providing the benefit *differently* to others than to him.

The decision of the Washington Trial Court should be reinstated in this case if for no other reason than that the civil rights of DeFunis as enunciated by the Federal Civil Rights Act in 42 USC §2000(d) were violated by his exclusion on account of race.

The Dissenting Opinion of Chief Justice Hale Was Well Grounded

Chief Justice Hale, after an unusually close scrutiny of the trial record in this case, wrote his dissenting opinion.

That dissenting opinion (despite criticism by Dean Roddis) is well grounded on the evidence.

Objection is made by respondents to his use of the information contained on the file jackets of the individual applicants. This information is highly relevant since it shows exactly what the considerations were that led to admission or rejection.

One cannot read the notations on the file jackets without knowing that many minority students were admitted with considerations of the so-called "other things" that not only did not indicate a superior likelihood of making a useful contribution to the school, but were the sort of things that would have disqualified a person had he been White, such as the notation: "Could make it if her personal situation could be worked out. Lighten load possibility. Admit." (Petition for Cert., A-47)

Another notation was "His recommendations are equivocal and his academic career unimpressive." (St. 394) Another one said: "Take a chance on his screwy personality and admit." (St. 396) Such relevant remarks are noted by Chief Justice Hale and amply support his dissenting opinion.

His recital of the facts in the dissenting opinion is not exaggerated.

We submit that Chief Justice Hale's remarks about the alternatives to the kind of discrimination that occurred against DeFunis are extremely well considered. We cannot do better in concluding this brief than quote from the last portion of the dissenting opinion (Pet. for Cert., A-54):

> "Are there methods by which a state owned and operated law school may be fairly and constitutionally administered so as to comport with the constitutions? Although the courts have neither the power nor the aptitude to operate a university and should be without the inclination to do so, several possible methods come to mind which prima facie, at least, meet the fairness and equal protection standards of the constitutions. One would be a system of comprehensive competitive examinations in predesignated courses, such as English, history, basic science, mathematics, economics and sociology, and with optional courses in other fields selected by the student.
>
> "Another method would be to work out a reasonably accurate mathematical correlation between grade values from different colleges or universities in preannounced prelaw course and to compute those equivalent grades with admission granted the 150 students with the highest grades. This gives every student a fair chance to achieve his ambition.
>
> "Another possible solution—in case the faculty believes that high prelaw grades should not be the main criterion—prescribe a sound but not extraordinarily high prelaw grade standard and make a random selection by lot and chance of the 275 applicants to be admitted from among those qualifying. And the fairest way of all—but I doubt its efficacy—admit all applicants possessing a minimum prerequisite grade point in prescribed courses, conduct the law classes in the field house or stadium, if necessary, give frequent examinations, and let the better qualified few survive on the basis of their grades in law school. There are,

of course, other methods equally fair and impartial which may be readily developed, all of which will meet the constitutional tests of fair and impartial application. *But whatever scheme is developed, one thing is certain: Keep it within the principles of the constitutions, no one can be preferred and no one can be disparaged because of race, color, creed, ethnic origin or domestic environment.*

"If it is the state policy—and I think it should be—to afford special training, guidance and coaching to those students whose domestic environment has deprived them of a fair chance to compete, or to provide financial assistance to students in economic straits, it is within the state's constitutional powers to do so, but once these students have reached the point of seeking admission to a professional or graduate school, no preference or partiality can or should, under the constitutions, be shown them.

"The rationale of *Anderson v. San Francisco Unified School Dist.*, 357 F. Supp. 248 (N.D.Cal.1972), an opinion dated October 30, 1972, filed in the United States District Court, Northern District of California, I think, expresses the principles which should govern the *DeFunis* case. That court held unconstitutional a school district's plan to give preference in employment and promotions to members of ethnic minorities in administrative and supervisory positions, such as principals, assistant principals, deans and heads of departments—a plan designed to increase the numerical representation of ethnic minorities in the administration of the schools. That court, in holding the scheme unconstitutional, said that 'The key issue in this case is whether or not a classification which is based on race is valid,' and answered it with a statement of principles which ought to control here:

"Preferential treatment under the guise of 'affirmative action' is the imposition of one form of racial discrimination in place of another. The questions that must be asked in this regard are: must an individual sacrifice his right to be judged on his own merit by accepting discrimination based solely on

the color of his skin? How can we achieve the goal of equal opportunity for all if, in the process, we deny equal opportunity to some?

"Mr. DeFunis came before the bar of the Superior Court much as did petitioners, parents of school children, in *Brown v. Board of Education*, 347 U.S. 483, 98 L.Ed. 873, 74 S.Ct. 686 (1954), asking that he not be denied admission to the university law school because of race or ethnic origin. The trial court properly ordered his admission. So, too, would I, and, therefore, I would affirm."

Respectfully submitted,

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